

THE MARK O. HATFIELD

# COURTHOUSE NEWS

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A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## Administrative Law

In 1996, the FCC promulgated regulations governing the prices and terms under which incumbent local telephone companies must make their services and facilities available for use by competitors. However, before those regulations took effect, many were stayed and eventually vacated by the Court of Appeals, which concluded that the FCC lacked jurisdiction over intrastate telephone service. While that stay was in effect, MCI and GTE negotiated an agreement for the purchase of local telephone services. Pursuant to the Telecommunications Act of 1996, any issues on which MCI and GTE could not reach agreement were decided by the Oregon PUC. The PUC did not treat the stayed regulations as legally binding.

MCI and GTE each appealed portions of the PUC's decision to federal court. While that action was pending, the Supreme Court reversed the Court of Appeals and held that the FCC did have jurisdiction to issue the challenged regulations. MCI then asked the district court to reverse the Oregon PUC's decision because the PUC had not followed the FCC regulations. Judge Jelderks declined

to do so.

When a federal court interprets a law --whether it be a statute, a regulation, the common law, or the Constitution-- the court is not creating new law but merely declaring what the law has always meant, even if this interpretation had not previously been acknowledged or conflicts with an earlier interpretation. Accordingly, that interpretation will usually be given retroactive effect. However, the FCC regulations did not simply interpret existing law but established new legal obligations. The challenged regulations never took effect because the Court of Appeals first delayed their effective date and later vacated the regulations entirely. Although the Supreme Court reversed on the merits, that does not change the fact that the regulations were stayed by the Court of Appeals during the relevant time period. Since the challenged regulations did not take effect until almost two years after the PUC issued its decision, the PUC did not err by failing to follow those regulations.

The opinion also addresses a variety of other issues concerning local telephone competition. MCI v. GTE, CV 97-1687-JE (Opinion, March 17 -- 68 pages).

Plaintiffs' Counsel:

Lisa Rackner (Local)  
Defense Counsel:  
James Brown (Local)  
Oregon State Defendants:  
W. Benny Won

## Antitrust

Judge Jones dismissed an action filed by a public utility against PGE. Plaintiff had entered into a settlement agreement with PGE following a state court action. Plaintiff then filed this action asking that the court declare that portions of the settlement agreement were null and void under federal anti-trust laws because they restricted competition. The dispute was centered upon rights to provide electric power to a Boise Cascade plant in St. Helens.

Judge Jones rejected plaintiff's argument, finding that PGE's actions were cloaked with state action immunity. The court held that any remedy rested exclusively with the state court and/or the OPUC. Columbia River People's Utility District v. Portland General Electric, CV 98-1497-JO (Opinion, March 22, 1999 - 18 pages).

Plaintiff's Counsel: Thomas Balmer  
Defense Counsel:  
William Martson, Jr.

## Voting Rights

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When ballot measure 60 passed last fall, Oregon became the first state to adopt vote by mail for all state-wide elections. The process allows voters to cast their ballots up to 20 days prior to the general federal election day established by federal statute. A non-profit public interest corporation and several individual registered voters filed an action challenging the constitutionality of the vote-by-mail system. Plaintiffs argued that the system essentially subverts the federally established election day.

On cross-motions for summary judgment, Judge Aiken analogized the system to absentee balloting systems currently in place in all 50 states. She concluded that Oregon's procedure did not actually conflict with federal law given that no votes are tallied until the federal election day and no results are released until 8:00 p.m. on election day. The court also noted that it was still possible to vote in person on election day by going to the county election offices. Voting Integrity Project, Inc. v. Kiesling, CV 98-1372-AA (Opinion, March 16, 1999 - 19 pages).

Plaintiffs' Counsel:

John DiLorenzo, Jr. (Local)

Defense Counsel: Stephen Bushong

## Patents

Plaintiff holds the patent for a technique for distinguishing viable from non-viable heart tissue. Plaintiff filed an action for patent infringement and defendant moved for summary judgment on the issue

of equitable estoppel. In support of its theory, defendant proffered evidence of plaintiff's silence following a charge of infringement, the fact that plaintiff didn't market a competing product and so lost no actual profits and on grounds that there was a special relationship between the parties based upon negotiations between their agents.

Judge Aiken found no evidence of an ongoing business relationship, but significant negotiations such that the plaintiff's silence could be considered misleading. However, the court noted the absence of any evidence that defendant relied upon plaintiff's silence to its economic or evidentiary detriment. Accordingly, the court denied defendant's motion for summary judgment. Wilson v. Fujisawa, Inc., CV 97-1422-AA (Opinion, March, 1999 - 10 pages).

Plaintiff's Counsel: E. Joseph Dean  
Defense Counsel: Leslie Darby

## Debt Collection

The United States filed an action to collect funds due on a defaulted student loan. In responding to the government's motion for summary judgment, defendant argued that the debt should be attributed to the state of Oregon because she was 17 years old when she signed the loan documents and because her loan proceeds kept her out of a state mental institution.

Judge Haggerty granted the government's motion for summary judgment, finding no authority to support the defendant's novel theory of avoidance. Liberally construing

defendant's response, the court also found that defendant failed to present any evidence of her incapacity at the time she signed the loan documents and further noted that the fact that plaintiff kept the money constituted a ratification of the contract that then could not be rescinded. United States v. Slifer, CV 98-532-HA (Order, February, 1999 - 5 pages).

## Privilege

Plaintiff is an attorney who represented a Hawaiian company in a dispute instituted by defendant. Defendant obtained a default judgment against the plaintiff's corporate client and then sent a letter to the attorney and the individual principals of the company offering to settle and to release the attorney and the individuals from any personal liability for claims the defendant contended it could raise against them for fraud and deliberate spoliation of evidence. Plaintiff attorney and the individuals then filed an action against the attorney who authored the letter and his law firm for defamation, intentional infliction of emotional distress and other related state law claims. Judge Ashmanskas dismissed the action based upon the absolute privilege afforded comments connected to pending or proposed judicial proceedings under the Restatement of Torts §§ 586, 596. DuBoff v. Gibson, CV 98-535-AS (F & R dated July 30, 1998; Adopted by Judge Jones Oct. 15, 1998 -- 5 pages).

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